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No. 81-2101

In The Supreme Court of the United States

OCTOBER TERM, 1982

PENNHURST STATE SCHOOL AND HOSPITAL, ET AL.,
PETITIONERS

v.

TERRI LEE HALDERMAN, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED

1. Whether, in a suit in federal court seeking injunctive relief against state officials based on federal constitutional and statutory claims and similar state statutory claims, the Eleventh Amendment to the United States Constitution prohibits granting relief under state law.

2. Whether relief under state law, in conformity with that law's interpretation by the highest court of the state, is barred by principles of comity.

3. Whether, in the circumstances of this case, it was proper to appoint masters to monitor compliance with the district court's orders.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–53a) is reported at 673 F.2d 647. The original opinion of the district court (79–1404 Pet. App. 6a–75a)[1] is reported at 446 F. Supp. 1295, and additional opinions of the district court concerning compliance with its original order are reported at 526 F. Supp. 414, 423, 428 and 533 F. Supp. 631, 641.[2] The prior opinion of the court of appeals (79–1404 Pet. App. 89a–196a) is reported at 612 F.2d 84.

[1] "79–1404 Pet. App." refers to the separately bound Appendix (entitled "Joint Appendix") filed with the petition in No. 79–1404 when the case was here previously.

[2] The sanctions imposed by the district court on the Commonwealth petitioners to induce their compliance with its orders (533 F. Supp. 631, 641) were affirmed by the court of appeals (673 F.2d 628) and are the subject of a pending petition for certiorari (No. 81–2363).

JURISDICTION

The judgment of the court of appeals was entered on February 26, 1982 (Pet. App. 54a–57a). The petition for a writ of certiorari was filed on May 13, 1982, and granted on June 21, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The background of this case is recounted in this Court's opinion at an earlier stage of this case (451 U.S. 1, 5–10 (1981)). This statement briefly summarizes and updates that background, supplemented as necessary to provide the basis for our discussion of the additional issues now raised.

A. *District Court Proceedings*

This class action was commenced on May 30, 1974, by respondents,[3] mentally retarded residents of Pennhurst State School and Hospital, against state officials responsible for operating that institution and for educating and training mentally retarded residents through various habilitative services. Respondents also sued county officials responsible for placing them in Pennhurst and for providing services to the mentally retarded in the various localities from which the residents came.[4] Respondents alleged that the lack of proper training and care for persons confined at Pennhurst violated the Fourteenth Amendment and state statutes.[5]

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[3] Respondents include the plaintiff class, the Pennsylvania Association for Retarded Citizens and the United States. In this brief "respondents" refers to the plaintiff class.

[4] Petitioners include, in addition to the defendants, the Pennhurst Parents-Staff Association, which intervened on appeal for the purpose of seeking certiorari.

[5] The United States intervened and claimed violations of the Fourteenth Amendment. The Pennsylvania Association for Re-

Although respondents initially sought both damages and injunctive relief, their damages claim was dismissed on the basis of the good faith immunity of the officials involved (79–1404 Pet. App. 74a).

This Court noted (451 U.S. at 7; footnote omitted) the district court's undisputed findings that "[c]onditions at Pennhurst are not only dangerous, with the residents often physically abused or drugged by staff members, but also inadequate for the 'habilitation' of the retarded. Indeed, the court found that the physical, intellectual, and emotional skills of some residents have deteriorated at Pennhurst." The district court found that this intellectual and behavioral regression is the result of overcrowded wards, lack of privacy, lack of training programs, an oppressive environment, extreme use of physical and chemical restraints, and seclusion in rooms with exposed radiators and other dangerous fixtures (79–1404 Pet. App. 30a n.34). Much of the staff neglect, physical restraints, excessive drugging and insufficient training is attributable to insufficient staffing (446 F. Supp. at 1303).

On the basis of these findings, the district court held (79–1404 Pet. App. 48a–73a) that petitioners had violated plaintiffs' rights under the Fourteenth Amendment, the Pennsylvania Mental Health and Mental Retardation Act, 50 Pa. Cons. Stat. Ann. § 4101 *et seq.* (Purden 1969) (MH/MR Act), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (which prohibits discrimination against the handicapped in any program receiving federal financial assistance). The district court did not address the issue of liability under the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6001 *et seq.* (D.D. Act).

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tarded Citizens intervened and claimed violations of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6001 *et seq.*, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (79–1404 Pet. App. 16a–17a).

The court held that both the Fourteenth Amendment and Pennsylvania law required defendants to provide habilitative services for mentally retarded persons in as "normal" an environment as the abilities of such persons permit: i.e, an environment, designed as nearly as possible to resemble a normal family home, in one of the communities of southeastern Pennsylvania.[6] In these "community living arrangements," provided to further the "normalization" principle Pennsylvania has adopted, necessary support services are provided in the communities (79–1404 Pet. App. 41a–46a).[7]

After further proceedings on relief, the court on March 17, 1978, ordered petitioner state and local officials to transfer all residents of Pennhurst to community living arrangements as soon as feasible, and in the interim to eliminate the unlawful conditions at Pennhurst (J.A. 8a–33a). In its order, the court provided that a master would be appointed pursuant to Rule 53, Fed. R. Civ. P., with "the power and duty to plan, organize, direct, supervise and monitor the implementation of" the court's orders (J.A. 17a). Specifically, the master was required to prepare and submit to the court various plans relating to placement of Pennhurst residents in communities (J.A. 18a–22a), and for the "interim operation of Pennhurst" (J.A. 25a).

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[6] The district court found that the "smaller the living unit * * *, the higher the level of behavioral functioning" (79–1404 Pet. App. 41a).

[7] The district court found that such community living arrangements are thus less costly to the state per individual than confinement at Pennhurst. (J.A. 179a–181a). However, although the state legislature provided $21 million in 1970 to enable 900 Pennhurst residents to be transferred to the communities, by trial time in 1977 only 37 residents had been transferred; $18 million of the appropriated funds remained unspent (451 F. Supp. 233, 236 (1978); 526 F. Supp. 409, 411 (1981)).

B. *Appellate Proceedings*

1. *The First Court of Appeals Opinion*

On appeal, no challenge was made by petitioners here to the district court's exercise of pendent jurisdiction over the state claim.[8] The court of appeals, adhering to this Court's longstanding directive to decide whether the judgment could be supported on statutory grounds before adjudicating constitutional issues (79–1404 Pet. App. 108a), found violations of both the federal D.D. Act and of the Pennsylvania MH/MR Act. As to the latter, it ruled (79–1404 Pet. App. 130a):

> Accordingly, we hold that the appellees have a state statutory right to habilitation, that they may sue to enforce that right, and that a federal court has pendent jurisdiction to enforce that right which was properly exercised in this instance.

While the court of appeals held that mentally retarded persons have a right under Section 111 of the D.D. Act, 42 U.S.C. 6010, to appropriate treatment in the least restrictive setting (79–1404 Pet. App. 139a–140a), it did not consider whether state law also contained this requirement. Nor did it find, either in the D.D. Act or the Constitution, any absolute ban on institutionalization (79–1404 Pet. App. 138a–140a, 158a). The appellate court, therefore, reversed the district court's requirement that Pennhurst be closed, and mandated "individual determinations by the [district] court, or by the Special Master, as to the appropriateness of an improved Pennhurst for each [Pennhurst] patient" (79–1404 Pet. App. 156a). Because the court of

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[8] Indeed, defendant state officials argued that the court of appeals' function was "not to determine what's possible, what might be a better world, but to determine what the Constitution requires, what the federal law requires *and what the state law requires*" (Tr. of Oral Reargument 114–115 (Sept. 6, 1979) (emphasis added).

appeals otherwise affirmed the award of relief on the basis of the federal D.D. Act and the state MH/MR Act, it did not decide whether the Constitution or Section 504 of the Rehabilitation Act also required that result.[9]

Considering the relief ordered, the court of appeals ruled that the district court acted within its discretion in appointing a master (79–1404 Pet. App. 148a–151a). The court rejected petitioners' argument that the role of a master in federal court is simply to find facts, observing that in other cases, masters had been "[a]uthorized to take all action necessary to implement [a] decree and to remedy breaches of compliance, * * * have performed negotiating and investigatory functions, and have issued recommendations for future implementations" (*id.* at 150a).[10]

2. *Modification of Relief on Remand*

To comply with the court of appeals' requirement, the district court, on April 24, 1980, established proce-

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[9] Three judges, in dissent, agreed that conditions at Pennhurst violated statutory and constitutional rights, but disagreed with the portion of the majority opinion "mandating a general right to individualized treatment in the least restrictive environment." 79–1404 Pet. App. 164a. These judges believed that none of the legal bases for the suit gave plaintiffs a right to be placed in the "least restrictive environment."

[10] The court of appeals further reasoned that (79–1404 Pet. App. 150a–151a):

> [Petitioners] were afforded an opportunity to devise and present their own remedies for conditions at Pennhurst. They failed to do so. At that point, having received insufficient assistance from the officials directly involved, the court was faced with the choice of massive personal participation in devising a complex scheme for remedying the violations that were found, or of proceeding with the assistance of a master, whose functions would be supplementary to and supervisory over those of the Commonwealth and County defendants.

dures for making the individual habilitation determinations (J.A. 34a).[11] The April 24 order requires that an individual habilitation plan (IHP) be prepared for each resident by a team made up of the resident, his parents or guardian, his case manager and members of the Pennhurst staff.[12] The IHP must include a designation of an appropriate community living arrangement. That order also provided for the appointment of a Hearing Master whose function is to review an IHP, upon request of the Pennhurst resident or his parent or representative.[13] The Hearing Master then submits to the court a report stating whether the services at Pennhurst "are more beneficial" for the individual than would be the community living arrangement called for by the IHP (J.A. 132a).[14] In the same order, the district court further clarified the functions of the Special Master, directing him to maintain a liaison office at

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[11] Although neither the petitioner state officials nor the petitioner county officials appealed from this order, petitioner Pennurst Parents-Staff Association did take an appeal to the Third Circuit, No. 80–1827. That appeal was dismissed by consent of all parties on July 25, 1980.

[12] The district court concluded in its original opinion that IHP's are a basic professional requirement for habilitation of retarded persons, but found that for many Pennhurst residents they were either non-existent, professionally inadequate or outdated (79–1404 Pet. App. 27a–28a).

[13] In June 1980, this Court ordered a partial stay of the judgment of the court of appeals. 448 U.S. 905. The district court interpreted the stay order as permitting only voluntary transfers from Pennhurst and directed the Hearing Master to conduct a hearing regarding the "voluntariness" of each proposed transfer. The court terminated this requirement in February 1982. See 533 F. Supp. 661, 662–663.

[14] Exceptions to the report may be filed with the court by the Pennhurst resident, his parents or representative, the Special Master, the county or the state (J.A. 133a). In considering such exceptions, the court has applied the "clearly erroneous" standard of Fed. R. Civ. P. 53(e). See, e.g., 533 F. Supp. at 665.

Pennhurst for the purpose of monitoring compliance there (J.A. 56a) and to review each IHP.[15]

On March 2, 1981, the district court found that the defendants had made no significant progress in providing community living arrangements for Pennhurst residents, and that the transfers had "almost come to a standstill" (526 F. Supp. 414, 415);[16] it ordered that at

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[15] In March 1981, the Secretary of the Commonwealth's Department of Public Welfare testified before a state legislative committee that the Special Master was duplicating services performed by the Commonwealth and county petitioners (see 81-2363 Pet App. 11a-13a). The district court held a hearing on October 19, 1981, to determine whether duplication was occurring, and concluded, in an opinion that further describes the duties of the Special Master, that there was no duplication (526 F. Supp. 428 (1981)). In that opinion, the court explained the three primary functions of the Special Master: First, "to regularly monitor the community living arrangements to which Pennhurst residents are being transferred" to assure that the facilities are "safe, sanitary, and beneficial to their habilitation"—a task the court found the Commonwealth had not performed (526 F. Supp. at 430-431). The second primary function is to review individual habilitation plans prepared for respondents "to ensure that [each] plan * * * provides for such care and services as will enable them to cope with life as effectively as their capacities will permit". 526 F. Supp. at 431. The court stressed *(ibid.)* that:

> The Special Master does not determine which Pennhurst residents will be moved to the community, when they will move, or where they will move. Such decisions are the responsibility of the defendants pursuant to this Court's Orders.

The third primary function of the Special Master is "to monitor conditions at Pennhurst * * * to make certain that the abuses that [the district court] found to exist at Pennhurst were corrected". 526 F. Supp. at 431. The description of the Special Master's functions is repeated in the district court's order of August 12, 1982 (J.A. 200a-208a).

[16] The court noted (526 F. Supp. at 417) that although the Commonwealth had agreed to place 150 Pennhurst residents in community living arrangements in the southeast region of Penn-

least 61 Pennhurst residents be transferred to community living arrangements in the various counties by June 30, 1981 (the relevant portions of the March 2 order are quoted in the court's November 18, 1981 order (526 F. Supp. 428, 431)). Although petitioners moved to alter or amend this order, and unsuccessfully sought a stay in the court of appeals, they subsequently told the district court that they did not wish to pursue the motion (526 F. Supp. at 418). When only six Pennhurst residents had been transferred by June 30, 1981, the court held a hearing to show cause why the state and county petitioners should not be held in contempt (526 F. Supp. at 418). By August 13, 1981, 28 additional residents had been moved, and Philadelphia county had entered into a consent order agreeing to place 18 more residents by September 30, 1981 (*id.* at 418–419). Accordingly, the court denied the contempt motion.

In early 1982, state officials began to perform two of the basic functions of the Special Master, i.e., review of individual habilitation plans and inspection of the community living arrangements (see note 15, *supra*). On August 12, 1982, the district court accordingly determined that the Office of the Special Master was to be phased out by December 31, 1982. J.A. 208a, 225a.

3. *Prior Supreme Court Review*

On June 9, 1980, this Court granted petitions for certiorari filed by the instant petitioners seeking review of the court of appeals' 1979 decision (447 U.S. 904). Petitioners argued that the court of appeals had erroneously interpreted both the federal D.D. Act and the state MH/MR Act; they did not suggest that the court of appeals lacked jurisdiction to consider the state law claim, or that comity required the court of appeals to forgo ruling on the state law claim. This Court reversed

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sylvania between July 1, 1980 and June 30, 1981, only four had been placed between July 1, 1980 and March 2, 1981.

the court of appeals' interpretation of the D.D. Act and declined to reach the state law issue, deeming it "unclear whether state law provides an independent and adequate ground which can support the court's remedial order" (451 U.S. at 31). The Court accordingly vacated the court of appeals' judgment and remanded the case to the court of appeals both to consider the remaining federal constitutional and statutory claims, and to reconsider the state law claim. As to the state law claim, the court of appeals was directed (451 U.S. at 31 & n.24) to (1) consider the MH/MR Act without reference to its prior holding regarding the D.D. Act; (2) consider whether the state right to treatment supported relief requiring that the treatment be furnished in the least restrictive environment; and (3) "consider the state-law issues in light of the Pennsylvania's Supreme Court's recent decision" in *In re Schmidt*, 494 Pa. 86, 429 A.2d 631 (1981).[17]

4. *The Opinion Under Review*

On remand, the court of appeals, again sitting en banc, unanimously held that state law accords retarded persons a right to habilitation in the least restrictive reasonably available setting, and it reinstated as the remedy for the state law violation the relief requiring individual placement determinations. The court noted that, in the absence of an authoritative construction of the MH/MR Act by the Pennsylvania Supreme Court, it had not speculated in its prior opinion about whether state law required the state to choose the least restrictive environment for habilitation of retarded persons. However, the court of appeals unanimously held that *In re Schmidt* had resolved that question, so that it

[17] The Pennsylvania Supreme Court decided *In re Schmidt*, defining the state's commitment to provide habilitation services pursuant to the MH/MR Act, after the original *Pennhurst* case had been briefed in this Court.

was now clear that the MH/MR Act does afford a mentally retarded person in state custody a right to placement in an environment less structured than an institution if such an environment is reasonably available and the person's abilities permit such placement. The court of appeals therefore concluded that state law, as authoritatively construed by the state Supreme Court, supported the relief it ordered on remand in this case. Pet. App. 10a–21a. See also *id.* at 32a (Aldisert, J., concurring); *id.* at 34a (Seitz, C.J., with Hunter, J., dissenting on other grounds); *id.* at 44a (Garth, J., dissenting on other grounds).

The court of appeals also unanimously rejected petitioners' claim that the Eleventh Amendment barred the court of appeals from granting prospective injunctive relief on the state law claim. The court observed (Pet. App. 21a) that petitioners' contention that federal courts were barred by the Eleventh Amendment from granting prospective injunctive relief on state law grounds, even if such relief is available on federal grounds, had not previously been advanced in the protracted proceedings in this case.[18] In any event, the court of appeals held the contention was without merit: where a state law claim is pendent to a federal claim, the Eleventh Amendment is no bar to granting injunctive relief on the state law ground. Pet. App. 24a–27a, citing *Siler* v. *Louisville & N.R.R.*, 213 U.S. 175 (1909); see also Pet. App. 34a (Seitz, C.J.); *id.* at 36a (Garth, J.). The court of appeals also unanimously held that abstention on the state law issue, newly urged by

[18] In the first appeal, the court of appeals had rejected petitioners' argument that the Eleventh Amendment barred all relief (79–1404 Pet. App. 143a–144a). See also note 23, *infra* (referring to petitioners' abandonment of challenge to judgment insofar as it related to operation of Pennhurst).

petitioners, would be improper.[19] *Id.* at 27a–29a; *id.* at 34a (Seitz, C.J.); *id.* at 36a (Garth, J.).

Finally, the court of appeals refused to reconsider its rejection of the argument that it was inappropriate to appoint a Special Master to assist in the implementation of the decree (Pet. App. 10a), noting that the use of a master in cases challenging conditions in a state institution is permissible under Pennsylvania law (Pet. App. 10a n.10, citing *Jackson* v. *Hendrick*, 457 Pa. 405, 321 A.2d 603 (1974)). The court made clear, however, that if changed circumstances later should indicate that the services of a special master are no longer required, a motion under Fed. R. Civ. P. 60(b) to modify the judgment would be a proper vehicle for obtaining that relief. Pet. App. 20a–21a, 31a.[20] Three judges dissented from the affirmance of the district court's use of the Special Master (*id.* at 35a (Seitz, C.J., with Hunter, J.); *id.* at 49a–53a (Garth, J.)). Judge Garth also would have vacated the April 24, 1980 order appointing a Hearing Master. *Id.* at 52a.[21]

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[19] No party had previously suggested any form of abstention in this case.

[20] No Rule 60(b) motion has been filed by petitioners; the district court orders reducing the Special Master's functions and then specifying a date for the termination of that office have been sua sponte (J.A. 194a–196a).

[21] Neither the court nor Chief Judge Seitz addressed the unappealed April 24, 1980 order (see pages 6–8, *supra*). Judge Garth reasoned that "essential principles of federalism and comity dictate that this court should not approve use of the intrusive device of appointing a master in the absence of evidence that an order enjoining compliance with Pennsylvania's own procedures * * * would be inadequate to protect the plaintiffs' state law right to habilitation in the least restrictive environment." Pet. App. 36a.

INTRODUCTION AND SUMMARY OF ARGUMENT

Although under the Eleventh Amendment federal courts may not entertain suits against states brought by private parties, federal jurisdiction is otherwise determined by Article III and its implementing jurisdictional statutes. The presence of an issue of state law in a case does not deprive a federal court of jurisdiction it otherwise has under Article III; a federal court having jurisdiction of a substantial federal constitutional claim may exercise pendent jurisdiction over a state law claim arising out of a "common nucleus of operative fact." *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 725 (1966). Such pendent jurisdiction has often been exercised in suits for prospective relief against state officials. E.g., *Siler* v. *Louisville & N.R.R.*, 213 U.S. 175, 191 (1909). Neither the Eleventh Amendment, nor the doctrines of sovereign immunity, comity or federalism warrant repudiation of *Siler* and the exclusion from federal courts of pendent claims for injunctive relief against state officials alleged to be acting in violation of both the federal constitution and state law.[22]

A federal court's decisional power is, however, limited to the issues properly before it. The order under review in this Court is a judgment of the court of appeals entered February 26, 1982, affirming the March 17, 1978, judgment of the district court "with [certain] exception[s]" and remanding the case "to the said District Court for further proceedings consistent with the opinions of this court" (Pet. App. 57a). While much has

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[22] Petitioners who are not state officials cannot, of course, rely on the Eleventh Amendment or the doctrine of sovereign immunity (e.g., *Edelman* v. *Jordan*, 415 U.S. 651, 667 n.12 (1974)); there is accordingly even less reason to protect them from liability on pendent state claims.

occurred in this case since March 17, 1978, the disposition of this writ requires consideration only of the March 17, 1978 order as revised by the court of appeals. If the Court declines petitioners' invitation to extend its review beyond the issues presented by the judgments below, this case is a very different one from that described in petitioners' brief.

The judgment below requires, in summary:

(1) that the inhumane conditions at Pennhurst summarized in this Court's prior opinion be corrected;

(2) that a special master monitor compliance with the decree and prepare compliance plans;

(3) that the defendants assess the individual needs of each member of the plaintiff class by developing IHP's, taking into account conditions at Pennhurst and the State's preference for placing retarded persons in the least restrictive reasonably available environment;

(4) that the defendants endeavor to place class members in community living arrangements or in Pennhurst, depending on the conclusions of the IHP's.

Petitioners have abandoned their attack on the requirement that the inhumane conditions at Pennhurst be corrected.[23] The Special Master long ago completed the compliance plans, and her office will be phased out by December 31, 1982. All that will remain of the case

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[23] When this case was previously before this Court, petitioners conceded that public institutions for the retarded must be run "in a decent and humane fashion" (79–1404 Pet. Br. 11 n. 18). And, in *Youngberg, Superintendent Pennhurst State School and Hospital* v. *Romeo*, No. 80–1429 (June 18, 1982), Pennsylvania "concede[d] that respondent [a Pennhurst inmate] has a right to adequate food, shelter, clothing, and medical care" (slip op. 7; footnote omitted). In any event, in the court of appeals on remand from this Court's original decision in the present case, petitioners abandoned any challenge to those "aspects of the judgment below that relate to the operation of Pennhurst" (78–1490 Joint Br. for Appellants 9 (3d Cir. Aug. 14, 1981)).

before the Court are the requirements relating to IHP's. The issue before the Court is simply whether some form of state governmental immunity bars the courts below from exercising pendent jurisdiction to order petitioners to obey state law as interpreted by the Pennsylvania Supreme Court in adopting and implementing the IHP's.

The other arguments pressed by petitioners simply do not address the issues raised by the judgment of the court of appeals under review here.

This is not a suit against a state that is barred by the Eleventh Amendment. Instead, as in *Ex parte Young*, 209 U.S. 123 (1908), it is a suit to compel state officials to cease illegal actions taken in the name of the state,[24] and not one which seeks any retroactive award functionally equivalent to damages to be paid from state funds. Although the official acts in *Young* allegedly violated the Constitution, not state law, the rationale of *Young* applies a fortiori here: the protection of the Eleventh Amendment does not extend to illegal acts of state officials, and providing a federal judicial remedy for those injured by such illegal acts does not interfere with state sovereignty—indeed, when the illegality lies in a violation of state law, restraining that violation reinforces, rather than undermines, state sovereignty. The relief ordered here requires the development of individual habilitation plans, the sort of prospective equitable relief approved in *Edelman* v. *Jordan*, 415 U.S. 651 (1974), and other cases requiring state officials to conform their conduct to legal requirements, some of which have involved substantial ancillary costs. The ancillary costs of remedial alternatives are an appropriate equitable consideration in fashioning relief, but do not

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[24] Petitioning local officials are, of course, entirely outside the protection of the Eleventh Amendment.

affect the question of federal court jurisdiction under the Eleventh Amendment.

Nor do considerations of comity support reversal of the decision below. The court of appeals on remand had the benefit of the State Supreme Court's intervening authoritative interpretation of the state MH/MR Act. It was accordingly appropriate for the federal court to base its decision on state law, rather than addressing the complex unresolved issues of federal law remaining in the case, which would have further protracted the proceedings, and perhaps required an unnecessary constitutional adjudication.

Petitioners also challenge the district court's use of masters in this case. We take no position on this issue, noting only that a showing of exceptional circumstances is necessary to justify the use of this extraordinary remedy, and that this Court has emphasized, in the constitutional context, that federal courts should defer to the informed professional judgments of those responsible for operating state mental facilities. *Youngberg* v. *Romeo*, No. 80–1429 (June 18, 1982).

ARGUMENT

I

THE ELEVENTH AMENDMENT DOES NOT BAR FEDERAL COURT JURISDICTION OVER THE STATE LAW CLAIM IN THIS CASE

A. The Lower Courts had Article III Jurisdiction over the State and Federal Claims Arising from a Common Nucleus of Operative Facts

Respondents—mentally retarded persons in state custody—brought this case in federal court to require state and county officials to provide safe and humane living conditions and to treat members of the plaintiff class in accordance with professionally developed individual habilitation plans. They asserted that these

rights derived from the federal Constitution, as well as federal and state statutes. Although they established in the district court that they have been regularly subjected to harmful institutional conditions resulting in physical and behavioral deterioration, they do not seek any award of damages from state treasuries.[25] Rather, they ask the federal courts to compel state officials to conform their conduct in the future to the requirements of state and federal law.

There can be no dispute that the district court was authorized by Article III and 28 U.S.C. (Supp. IV) 1343(a)(3) to hear and decide both the federal and state law issues.[26] Although there has been disagreement as to the circumstances when a federal court having jurisdiction of a federal claim should exercise its discretion to decide a pendent state claim (compare, e.g., *Hagans* v. *Lavine*, 415 U.S. 528, 545–550 (1974), with *id.* at 550–552 (Powell, J., dissenting), 557–561 (Rehnquist, J. dissenting)), the Court spoke with one voice in *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 725 (1966) (emphasis in original), and has repeatedly relied on its explanation there of the power of federal courts to hear pendent claims:

> The state and federal claims must derive from a common nucleus of operative fact. But if considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial

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[25] A claim for damages against state officials was dismissed by the district court because of their qualified immunity (79–1404 Pet. App. 74a). Cf. *Scheuer* v. *Rhodes*, 416 U.S. 232 (1974).

[26] Section 1343(a)(3) gives district courts original jurisdiction over actions brought under 42 U.S.C. (Supp. IV) 1983 to enforce constitutional rights. Congress has long recognized that this jurisdiction includes pendent state law claims. See H.R. Rep. No. 94–1558, 94th Cong., 2d Sess. 4 n.7 (1976). Cf. *Maher* v. *Gagne*, 448 U.S. 122, 130–133 (1980).

> proceeding, then, assuming substantiality of the federal issues, there is *power* in federal courts to hear the whole.

As the Court recently noted in *Aldinger* v. *Howard*, 427 U.S. 1, 9 (1976):

> These cases from *Osborn* [v. *Bank of United States*, 22 U.S. (9 Wheat) 738 (1824)] to *Gibbs*, show that in treating litigation where nonfederal questions or claims were bound up with the federal claim upon which the parties were already in federal court, this Court has found nothing in Art. III's grant of judicial power which prevented adjudication of the nonfederal portions of the parties' dispute.

Because all of the claimed violations of rights here arise from a "common nucleus of operative fact," so that respondents "would ordinarily be expected to try them all in one judicial proceeding," and in light of the "substantiality of the federal issues" (*United Mine Workers* v. *Gibbs*, *supra*, 383 U.S. at 725), the entire case is one within the jurisdiction of the federal courts.

In exercising its Article III power over the state law claim, the court of appeals followed a recent decision of the Pennsylvania Supreme Court, *In re Schmidt*, *supra*. That case held that the Pennsylvania MH/MR Act created a right in mentally retarded persons to the relief respondents were seeking—safe and humane habilitative conditions in a reasonably available setting providing the least restriction consistent with adequate treatment and required care (Pet. App. 12a).[27] By fol-

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[27] Petitioners argue that the court of appeals erred in its state law decision by failing to recognize that the state rights are conditioned on "adequate legislative appropriations" and make the bald assertion that the legislature "has not provided such funding" (Br. 19 n.17). But see note 7, *supra*. However, they did not present this question of state law in their petition for certiorari, and have never made a record demonstrating what level of appropriations is "adequate"—nor even that the

lowing the state statutory interpretation in *Schmidt*, the court of appeals avoided deciding the substantial constitutional issue: whether the Due Process Clause (Fourteenth Amendment, Section 1) of the federal Constitution entitles respondents (or some of them) to placement in the less restrictive community living arrangements that Pennsylvania has established for habilitation of its retarded citizens. The federal question must be a substantial one. In this case it was.[28] Thus, the court of appeals followed a long line of precedent from this Court beginning with *Siler* v. *Louisville & N.R.R.*, 213 U.S. 175, 193 (1909), establishing that federal courts are to dispose of cases on non-constitutional grounds, including state statutory grounds, if they can do so (see pages 24–25, *infra*). Under the circumstances, "judicial economy, convenience and fairness to litigants," *United Mine Workers* v. *Gibbs*, *supra*, 383 U.S. at 726, as well as the close tie of the state claim to a "question of federal policy," *id.* at 727; cf. *Pennhurst State School and Hospital* v. *Halderman*, 451 U.S. 1, 27–30, 31 (1981), fully justified the exercise of pendent jurisdiction over the state law claim.

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judgment below would require them to spend any more for class members placed in the community rather than retained in Pennhurst. Accordingly, it is especially appropriate here to respect the traditional reluctance of this Court to upset a state law ruling of a court of appeals (*Allegheny County* v. *Frank Mashuda Co.*, 360 U.S. 185, 191 (1959)), and to apply the state law as the court of appeals found it—clear, settled and binding.

[28] There were no "cases in this Court * * * settling the matter one way or the other," *Hagans* v. *Lavine*, 415 U.S. 528, 539 (1974), and the district court had found such a constitutional entitlement on the basis of extensive lower court authority and its conclusion that "when the [Supreme] Court next examines the issue, it will find that there is such a constitutional right." 79–1404 Pet. App. 60a–61a n.55. Cf. *Parham* v. *J.R.*, 442 U.S. 584 (1979); *Jackson* v. *Indiana*, 406 U.S. 715, 737 (1972); *O'Connor* v. *Donaldson*, 422 U.S. 563, 574 n.9 (1975); *Youngberg* v. *Romeo*, No. 80–1429 (June 18, 1982).

B. The Eleventh Amendment Does Not Bar Judgment on the Pendent Claim

While the Eleventh Amendment literally bars exercising federal "Judicial power" over suits "in law or equity, commenced or prosecuted against one of the United States by Citizens of another State," this Court has held that "an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Edelman* v. *Jordan*, 415 U.S. 651, 662–663 (1974); *Hans* v. *Louisiana*, 134 U.S. 1 (1890).[29]

Sovereign immunity, however, bars only suits against states, not suits against state officials that do not seek to establish a liability against a state itself. Thus, in *Ex parte Young*, 209 U.S. 123 (1908), the Court held that a suit to compel state officials to conform their conduct to the requirements of the federal constitution was not barred by sovereign immunity, even though the suit sought to restrain the defendant state attorney general from taking actions in the state courts that had been explicitly authorized by state statute. The Court reasoned (209 U.S. at 159):

> The act to be enforced is alleged to be unconstitutional, and if it be so, the use of the name of the State to enforce an unconstitutional act to the injury of complainant is a proceeding without the authority of and one which does not affect the State

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[29] We assume that notwithstanding petitioners' failure to raise in the district court or the court of appeals in its first review its contention that the Eleventh Amendment bars consideration of pendent state law claims, this Court will regard that question as sufficiently "jurisdictional" to permit its being raised here. *Ford Motor Co.* v. *Department of Treasury*, 323 U.S. 459, 467 (1945); cf. *Patsy* v. *Board of Regents*, No. 80–1874 (June 21, 1982) slip op. 19, n.19. and Powell, J., dissenting, slip op. 6–11.

> in its sovereign or governmental capacity. It is simply an illegal act upon the part of a state official in attempting by the use of the name of the State to enforce a legislative enactment which is void because unconstitutional.

Thus, the reason the suit was not against the state, but only against the state official, was because the suit turned on the illegality of the official's acts. If the acts were in fact illegal, the "use of the name of the State" (209 U.S. at 159) did not protect the official from a suit to require him to conform his acts to the law. It accordingly makes no difference whether the state official's acts are illegal because they are inconsistent with state or with federal law—it is the fact of illegality itself that deprives him of the benefit of the state's immunity. Indeed, where, as here, conduct is found to be illegal under state law, predicating a narrowly tailored remedy on settled state law rather than federal law reinforces, rather than undermines, the state's sovereign authority.

Moreover, here, as in *Young*, respondents seek only prospective relief, and not any retroactive award that is functionally equivalent to a claim for damages against the state. As the Court explained in *Edelman* v. *Jordan*, *supra*, 415 U.S. at 668, nothing in *Young* indicates that the Eleventh Amendment bars all suits with a financial impact on the state treasury; *Young* and its progeny permit suits against state officials that require "State officials, in order to shape their official conduct to the mandate of the Court's decrees, * * * to spend money from the state treasury * * *." In contrast, the monetary relief awarded by the district court in *Edelman* v. *Jordan* ran afoul of the Eleventh Amendment because it was "measured in terms of a monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials" (415 U.S. at 668).

1. Petitioners' attempts to avoid the force of *Ex parte Young* are unpersuasive. Focusing on the relief

awarded, they suggest that they cannot, consistently with the Eleventh Amendment, be required to make "substantial changes in state programs * * * that must be satisfied from the state treasury" (Br. 14). But the application of *Ex parte Young* depends on the nature of the relief sought, not on whether that relief, if granted, would be costly. The relief here requires the development of individual habilitation plans, and placement of respondents in accordance therewith. This is prospective equitable relief, and not the kind of retroactive award, requiring the payment of funds from the state treasury, that was prohibited in *Edelman* v. *Jordan*, *supra*. See also *Quern* v. *Jordan*, 440 U.S. 332, 347 (1979).

Petitioners have cited no case, and we are aware of none, where the question of federal court jurisdiction turns on the *amount* of the anticipated ancillary costs of the relief necessary to cure the violation found. To the contrary, this Court has approved prospective relief in federal courts anticipated to cost a state far in excess of what petitioners claim here. See *Milliken* v. *Bradley*, 433 U.S. 267, 288–290, 289 (1977). Other cases necessarily have affected a state's control of its own real property, a result in which the future costs would be incalculable. E.g., *Mobil Oil Co.* v. *Kelley*, 493 F.2d 784 (5th Cir.), cert. denied, 419 U.S. 1022 (1974).[30]

In short, consideration of the ancillary costs of prospective relief go to the question of the proper exercise, not the existence, of federal court jurisdiction. Like other "practicalities of the situation" (*Davis* v. *School Commissioners*, 402 U.S. 33, 37 (1971)), costs of remedial alternatives should be considered by a court of

[30] Indeed, a jurisdictional rule based upon the *amount* of the ancillary costs of prospective relief would require considerable speculation, since any estimate of the anticipated incremental costs of relief must be based on an assumption concerning what the state would spend absent the relief.

equity in fashioning relief. Since petitioners have not shown that the mere ordering of compliance with state statutory requirements imposes any incremental costs on them, they have established no foundation for a claim of abuse of discretion based on such costs.[31]

2. Petitioners' principal effort to distinguish *Ex parte Young*, however, is based on the assertion that *Young* establishes a pragmatic "exception" to the Eleventh Amendment's limitation of federal court jurisdiction—an exception, according to petitioners, limited to situations in which state officials are required to conform to federal statutes or constitutional requirements (Br. 15–19). But, of course, the Eleventh Amendment on its face admits of no such "exception", and this Court has no power to create any exception to a constitutional bar to federal court jurisdiction. See *Edelman* v. *Jordan*, 415 U.S. 651, 668–669 (1974); *Hans* v. *Louisiana*, 134 U.S. 1, 11 (1890). *Ex parte Young* rests instead on recognition that the Eleventh Amendment simply does not apply to suits seeking to restrain illegal acts by state officials—whether those acts are illegal because they violate the Constitution, as in *Young*, or federal or state law. See, e.g., *Greene* v. *Louisville & I.R.R.* 244 U.S. 499, 506–507 (1917); *Hopkins* v. *Clemson Agricultural College*, 221 U.S. 636, 642–643 (1911); *Mobil Oil Corp.* v. *Kelley*, 493 F.2d 784 (5th Cir.), cert. denied, 419 U.S. 1022 (1974); *New England Patriots Football Club, Inc.* v. *University of Colorado*, 592 F.2d 1196, 1201–1202 (1st Cir. 1979).

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[31] Petitioners' expense argument seems largely based upon the costs of the masters found necessary by the district court, see Point III, *infra*. But the Eleventh Amendment does not bar levying the costs of litigation against a state. *Hutto* v. *Finney*, 437 U.S. 678 (1978). The record does not reflect what incremental costs, if any, would be incurred as a result of the relief ordered.

In *Cory* v. *White*, No. 80–1556 (June 14, 1982), slip op. 4, this Court recently reaffirmed this governing principle: "[S]uits to restrain action of state officials can, consistently with the constitutional prohibition, be prosecuted [in federal court] only when the action sought to be restrained is without the authority of state law or contravenes the statutes or Constitution of the United States" (quoting *Worcester County Trust Co.* v. *Riley*, 302 U.S. 292, 297 (1937)). This is such a case.[32]

The rule that petitioners seek to engraft on the Eleventh Amendment—distinguishing state law claims from federal law claims—would severely limit the ability of federal courts to decide state law issues arising in federal question cases—a vital adjunct of the jurisdiction conferred by 28 U.S.C. (Supp. IV) 1331 and 1343. *Osborn* v. *Bank of United States*, 22 U.S. (9 Wheat.) 738, 822–823 (1824); *Risty* v. *Chicago, R.I. & P. Ry.* , 270 U.S. 378, 387 (1926). In numerous decisions,[33] this Court has used this fundamental power to dispose of suits involving state or local governmental functions

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[32] Petitioners assert (Br. 18–19) that they cannot be required to "meet an interpretation of state law that is not even authoritative within their own state," although the court of appeals found that the Pennsylvania Supreme Court *had* spoken authoritatively on the precise issue (see note 27, *supra*). They also claim (Br. 19–20) that the Eleventh Amendment bar applies so long as they do not act without "colorable" authority. But it is clear that the state Attorney General in *Young* was not involved in the sort of "frolic and detour" that petitioners assert is necessary to remove the constitutional bar. But cf. *Monroe* v. *Pape*, 365 U.S. 167, 192 (Harlan, J. concurring), 202 (Frankfurter, J., dissenting) (1961).

[33] E.g., *Siler* v. *Louisville & N.R.R.*, *supra*; *Township of Hillsborough* v. *Cromwell*, 326 U.S. 620, 629–630 (1946); *Waggoner Estate* v. *Wichita County*, 273 U.S. 113, 116–119 (1927); *Chicago Great Western Ry.* v. *Kendall*, 266 U.S. 94, 97 (1924); *United Fuel Gas Co.* v. *Railroad Commission*, 278 U.S. 300, 307 (1929); *Greene* v. *Louisville & I.R.R.*, *supra*, 244 U.S. at 508, 519.

without deciding the merits of a federal claim.[34] As the Court emphasized in *Siler* v. *Louisville & N.R.R.*, *supra*, 213 U.S. at 193, an action challenging a state railroad commission's rate setting order on federal constitutional grounds, which the Court disposed of on state law grounds:

> Where a case in this court can be decided without reference to questions arising under the Federal Constitution, that course is usually pursued and is not departed from without important reasons. In this case we think it much better to decide it with regard to the question of a local nature, involving the construction of the state statute and the authority therein given to the commission to make the order in question, rather than to unnecessarily decide the various constitutional questions appearing in the record.

Just as this Court held in *Siler* that the railroad commission there had exceeded the ratemaking authority vested in it by Kentucky law, it was proper for the court of appeals here to consider whether the petitioners lacked authority under the Pennsylvania law to hold in custody at Pennhurst persons for whom more suitable accommodations could be provided. Indeed, that is precisely what this Court instructed the court of appeals to reconsider on remand from this Court's prior decision. 451 U.S. at 31. See also *Greene* v. *Louisville & I.R.R.*, *supra*.

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[34] Most recently, the Court has *required* a court of appeals to decide a pendent state law issue which may obviate a constitutional decision. *Schmidt* v. *Oakland Unified School District*, No. 81-1444 (June 21, 1982)). In other cases, courts of appeals have required district courts to decide pendent state law claims in preference to constitutional claims or affirmed them when they did so. *Seals* v. *Quarterly County Court*, 526 F.2d 216 (6th Cir. 1975); *Mobil Oil Corp.* v. *Kelley*, *supra*.

The availability of a federal forum for these cases is also important from the point of view of the parties. Otherwise, cases against state officials based on federal and state law would either be bifurcated between state and federal court, which would complicate and extend the litigation to no one's advantage, or plaintiffs would be compelled to forgo federal forums to hear federal claims.

Of course, the principles of federalism upon which petitioners rely in urging a restriction of *Ex parte Young* must also be recognized in cases involving pendent state claims. But those values can best be preserved by recognizing:

> the discretion in the court to dismiss without prejudice claims resting upon state law. When uncertainty obtains as to prevailing local doctrine, when that doctrine is enmeshed in clashing policies that render any legal formulation an intrinsically changing concept, the discretion should be exercised to limit federal adjudication to the federal grounds. When, on the contrary, the issue turns on principles well settled by the state, the federal courts can safely undertake the full adjudication of the case.

Wechsler, *Federal Jurisdiction and the Revision of the Judicial Code*, 13 Law & Contemp. Probs. 216, 232–233 (1948) (footnotes omitted), quoted in *Aldinger* v. *Howard*, *supra*, 427 U.S. at 35–36, n.16 (Brennan, J. dissenting).

II

"COMITY" DOES NOT BAR THE DECISION OF THE COURT OF APPEALS

A federal court is normally expected to decide the issues put before it, if it has jurisdiction to do so (*Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 814 (1976)), even if the only issue pre-

sented is one of state law (*Allegheny County* v. *Frank Mashuda Co.*, 360 U.S. 185, 188–189 (1959)). Moreover, the strong preference for avoiding constitutional issues may require the federal court to resolve pendent state law claims before reaching the federal constitutional claim, even in a suit against a local governmental entity (*Schmidt* v. *Oakland Unified School District*, No. 81–1444 (June 21, 1982)).

There are, however, situations in which principles of comity—i.e., deference to state prerogatives and reliance on state officials and institutions to treat citizens fairly—justify the refusal to exercise federal jurisdiction. E.g., *Younger* v. *Harris*, 401 U.S. 37 (1971); *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293 (1943); but cf. *Lake Carriers' Association* v. *MacMullan*, 406 U.S. 498, 509–510 (1972). However, state prerogatives are not unlimited, and petitioners' view that comity requires every plaintiff who has stated a claim against state officials justiciable in federal court also to "justif[y]" (Br. 32) federal intervention in order to obtain relief finds no support in this Court's decisions. Indeed, comity will often be better served by deciding a case on state law grounds, thereby deferring to established state policies and avoiding the imposition on state officials of federal constitutional or statutory obligations which cannot be altered by state legislators.

Accordingly, as *United Mine Workers* v. *Gibbs*, *supra*, 383 U.S. at 726–729 and *Hagans* v. *Lavine*, 415 U.S. 528, 545–547 (1974), demonstrate, pendent state law claims are ordinarily to be decided in preference to federal constitutional claims, when properly presented in federal courts. *Gibbs* (383 U.S. at 726) teaches that pendent jurisdiction should be exercised when supported by "considerations of judicial economy, convenience and fairness to litigants." Petitioners speculate (Br. 24–25) that plaintiffs in other cases might plead an unmeritorious federal claim in order to bring a more

substantial state claim in federal court. But the doctrine of pendent jurisdiction is tailored to weed out precisely such cases—i.e., not only those in which the federal claim is fraudulent or not even colorable, but also those in which the state law claim predominates or other factors weigh against the exercise of jurisdiction over it. See *United Mine Workers* v. *Gibbs*, *supra*, 383 U.S. at 726–727. *Gibbs* does counsel against "[n]eedless decisions of state law"; it directs federal courts to reserve novel questions of state law to the state courts in order "to promote justice between the parties, by procuring for them a surer-footed reading of applicable law" (*id.* at 726; Footnote omitted). But that instruction calls for respect for state courts as the authoritative interpreters of state law; it does not suggest that federal courts must normally avoid relying on state law as authoritatively interpreted by state courts.

The opinions of the court of appeals fully incorporate the comity called for by *Gibbs*. When it first reviewed the case, the court of appeals did not hold that state law afforded a right to the least restrictive alternative because Pennsylvania's highest court had not then so ruled. On its second review of the case, after this Court had directed reconsideration of the state law question in light of *In re Schmidt*, the court of appeals gave that decision the deference to which it was entitled. The Pennsylvania courts remain the final arbiters of Pennsylvania law.

Moreover, the acceptance of pendent jurisdiction here is strongly supported by "considerations of judicial economy, convenience and fairness to litigants" (383 U.S. at 726). Protracted proceedings have been held on the state and federal claims which were first asserted in federal court in this case in 1974. This Court's remand order presented to the court of appeals three types of issues: federal constitutional issues, complex and unsettled federal statutory issues not previously fully consid-

ered by the district court (Pet. App. 30a–31a), and the state law issue that was settled in light of the intervening state supreme court decision in *In re Schmidt*. It was entirely appropriate for the court of appeals to comply with this Court's mandate by ending the case on the basis of state law rather than remanding the case for additional findings on the unsettled federal statutory issues and further delaying the completion of this eight-year old case. As we have explained, it was also proper for the court of appeals to have avoided deciding the constitutional issue here.[35]

A comparison of two cases decided by this Court on the same day clarifies the circumstances in which principles of comity indicate that a federal court should abstain from deciding a state law issue. In *Louisiana Power & Light Co.* v. *City of Thibodaux*, 360 U.S. 25 (1959), on which petitioners rely (Br. 29–30 n.29), the Court found that the district court had properly stayed proceedings in federal court pending an interpretation by the state supreme court of the relevant state statute, while in *Allegheny County* v. *Frank Mashuda Co.*, 360 U.S. 185 (1959), a similar refusal by the district court to consider state law issues was held to be improper. *Thibodaux* and *Allegheny* both raised a question of the power of a political subdivision to condemn land under state law. But in *Thibodaux* the district court would have had to forecast the state's interpretation of a "doubtful and unsettled statute" (360 U.S. at 27, n.2),[36] while in *Allegheny* the applicable state law was "settled" (360 U.S. at 190), as it was here

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[35] This case, which was tried to the court, presents no potential for jury confusion regarding related state and federal questions. See *United Mine Workers* v. *Gibbs*, *supra*, 383 U.S. at 727.

[36] Cf. *Kaiser Steel Corp.* v. *W.S. Ranch Co.*, 391 U.S. 593, 594 (1968); *Colorado River Water Conservation District* v. *United States*, *supra*, 424 U.S. at 814.

by the time the court of appeals considered the case on remand. Accordingly, as in *Allegheny*, there are here no "exceptional circumstances where the order to the parties to repair to the district court would clearly serve an important countervailing interest," and thus no room for the application of the "extraordinary and narrow exception to the duty of a [federal court] to adjudicate a controversy properly before it" (360 U.S. at 188–189).

The other situations in which abstention may be appropriate, noted in *Allegheny*, are also not present here. Thus, since the state law issue has been authoritatively decided, there is no remaining possibility that the federal constitutional issue "might be mooted or presented in a different posture by a state court determination of pertinent state law" (360 U.S. at 189; see Pet. App. 27a–29a). Nor is there any possibility that the "exercise of jurisdiction by the federal court [will] disrupt a state administrative process * * * or otherwise create needless friction by unnecessarily enjoining state officials from executing domestic policies" (360 U.S. at 189). Compare *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1943); *Alabama Public Service Commission* v. *Southern Ry.*, 341 U.S. 341 (1951). Prior to the individual habilitation determinations required by the court of appeals, there were no administrative decisions to review. In fact, the gist of the state claim is that petitioner state officials have failed to "execute domestic policies" by assigning Pennhurst residents to the habilitative environments that in their own professional judgments are most appropriate.[37]

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[37] As the court of appeals noted (Pet. App. 27a) absention under *Younger* v. *Harris*, 401 U.S. 37 (1971), and its progeny is not appropriate because no injunction against state law enforcement proceedings is sought. See also *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975). Similarly, the line of cases relying on "comity" to extend to actions at law the long-standing judicially cre-

In sum, the court of appeals did not abuse its discretion or violate the principles of comity by deciding the state law issues when the applicable state law had been authoritatively interpreted by the state Supreme Court.

III

WE TAKE NO POSITION ON THE DISTRICT COURT'S USE OF MASTERS

Petitioners attack the district court's utilization of masters to supervise their compliance with the court's orders. We originally supported appointment of the masters in the district court, but we take no position on the facts presented here.

We do, however, offer the following considerations. Resort by a federal court to use of a master for such purposes as monitoring and enforcing implemention of a court decree is "an extraordinary remedy." *United States* v. *City of Parma*, 661 F.2d 562, 578–579 (6th Cir. 1981), cert. denied, No. 81–1317 (Apr. 19, 1982). Cf. Fed. R. Civ. P. 53(b). Even in cases involving complex equitable decrees, state and local government officials are entitled to a presumption that they will comply in good faith with the orders of a federal court. Absent specific findings that the state has, without justification, defaulted on its responsibilities under the decree, the federal judiciary should not insert itself into the

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ated bar against equitable interference with the collection of state taxes does not govern this suit for injunctive relief under the MH/MR Act and the Fourteenth Amendment. *Fair Assessment in Real Estate Association, Inc.* v. *McNary*, 454 U.S. 100 (1981); see *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293 (1943); *Matthews* v. *Rogers*, 284 U.S. 521 (1932).

management and operation of purely state activities through appointment of a master.[38]

Moreover, there are certain state functions into which it is especially inappropriate for the judiciary to intrude—whether by an appointed master or by the court itself. For example, this Court, stressing the need to minimize "interference by the federal judiciary with the internal operations of [state] institutions," recently held that federal court review of constitutional challenges to conditions in state institutions is limited to ensuring that "'professional judgment in fact was exercised.'" *Youngberg* v. *Romeo*, *supra*, slip op. 15. The rationale of *Youngberg* calls for similar deference to the exercise of professional judgments in judicial review of constitutional challenges to individual treatment and placement decisions. *Youngberg*'s rationale also suggests a similar standard for the review of statutory challenges to such decisions, at least in the absence of a clear indication that the legislature intended a broader scope of review.

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[38] Indeed, the Federal Rules of Civil Procedure expressly provide that "[a] reference to a master shall be the exception and not the rule." Fed. R. Crim. P. 53(b). Other means, less intrusive than masters, are available to district courts for enforcing orders. The normal means of ensuring compliance is reliance on the adversary system to call to the court's attention, by proper motion, violations of the decree. Additionally, the filing of periodic reports by the defendants serves as a means of monitoring the extent of compliance. In the event of inexcusable noncompliance, the court can resort to use of its contempt power.

CONCLUSION

The court of appeals' findings on liability should be affirmed. The United States takes no position on the propriety of the use of the masters in this case.

Respectfully submitted.

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